(2)

No. 90-1882

Supreme Court, U.S.
FILED
JUL 12 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1991

ESTATE OF ANDREW P. CARTER, Through Its Dative Testamentary Executor, Eugene G. Taggart,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General
SHIRLEY D. PETERSON
Assistant Attorney General
GILBERT S. ROTHENBERG
TERESA T. MILTON
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether, for federal estate tax purposes, the value of a life estate is to be determined by actuarial tables when it is known that the decedent died simultaneously with the transferor (his wife) in an automobile accident.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statute and regulations involved	2
Statement	2
Argument	3
Conclusion	9
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Estate of Lion v. *Commissioner*, 438 F.2d 56 (4th Cir.), cert. denied, 404 U.S. 870 (1971)	4-5, 6, 8
Estate of Marks v. *Commissioner*, 94 T.C. 720 (1990)	8
Estate of Wein v. *Commissioner*, 441 F.2d 32 (5th Cir. 1971)	7
Holbrook v. *United States*, 575 F.2d 1288 (9th Cir. 1978)	5
Ithaca Trust Co. v. *United States*, 279 U.S. 151 (1929)	4, 6
Miami Beach First National Bank v. *United States*, 443 F.2d 116 (5th Cir. 1971)	8
United States v. *Provident Trust Co.*, 291 U.S. 272 (1934)	4, 6, 7

Statutes and regulations:

Internal Revenue Code (26 U.S.C.):	
§ 2013	2, 4, 5
§ 2013(a)	2
§ 2013-4(a)	4
§ 2013(b)	2, 4

Statutes and regulations—Continued: Page

Treasury Regulations on Estate Tax (26 C.F.R.):
§ 20.2013-4 ..... 2, 4, 8
§ 20.2031-1 2
§ 20.2031-1(b) 4
§ 20.2031-4 3
§ 20.2013-4(a) 4
§ 20.2031-7 ..... 2, 3, 8
§ 20.2031-9 2
§ 20.2031-10 8

Miscellaneous:
Rev. Rul. 80-80, 1980-1 Cum. Bull. 194 7

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1882

ESTATE OF ANDREW P. CARTER, Through Its Dative Testamentary Executor, Eugene G. Taggart,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-12) is reported at 921 F.2d 63. The memorandum opinion of the district court (Pet. App. 13-20) is unofficially reported at 91-1 USTC (CCH) ¶ 60,003.

JURISDICTION

The judgment of the court of appeals (Pet. App. 21) was entered on January 11, 1991. A petition for rehearing and suggestion for rehearing en banc was denied on March 15, 1991 (Pet. App. 22-23; 929 F.2d 699). The petition for a writ of certiorari was filed on June 10, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE AND REGULATIONS INVOLVED

The relevant portions of Section 2013 of the Internal Revenue Code (26 U.S.C.) are set forth at the Appendix, *infra*, 1a. The relevant portions of Sections 20.2013-4, 20.2031-1, 20.2031-7, and 20.2031-9 of the Treasury Regulations on Estate Tax (26 C.F.R.) are set forth at the Appendix, *infra*, 1a-3a.

STATEMENT

1. Andrew P. Carter and his wife, Josephine Carter, died in 1987 in an automobile accident. Because Mr. and Mrs. Carter perished in circumstances where it was impossible to ascertain the order of their deaths, the Louisiana simultaneous death statute operated to create the presumption that Mr. Carter (who was a few months younger than Mrs. Carter) survived Mrs. Carter. Mr. Carter thus inherited from Mrs. Carter a usufruct (life estate) in property valued at approximately $1 million (Pet. App. 1-3, 13-14).

After filing an estate tax return, petitioner filed a claim for refund, asserting that the estate was entitled to a credit in the amount of $292,450.56, pursuant to Section 2013 of the Internal Revenue Code (Pet. App. 2-3, 14). That provision authorizes a credit against estate tax for "all or a part of the amount of the Federal estate tax paid with respect to the transfer of property * * * to the decedent * * * from a person * * * who died within 10 years before, or within 2 years after, the decedent's death." 26 U.S.C. 2013(a). The amount of the credit is the portion of the transferor's estate tax liability that bears the same relationship to the transferor's total tax liability as the value of the transferred property bears to the transferor's total taxable estate. See 26 U.S.C. 2013(b); Pet. App. 3.

The amount of the credit claimed by petitioner was computed by valuing the transferred property (*i.e.*, the life

interest Mr. Carter received from his wife) by reference to actuarial tables contained in Treasury Regulations on Estate Tax (26 C.F.R. 20.2031-7). The Commissioner disallowed the credit because use of the actuarial tables to value Mr. Carter's life interest was not appropriate in this case. Since Mr. Carter died simultaneously with his wife, the value of his life interest was known to be zero at the time of the transfer under "recognized valuation principles" (26 C.F.R. 20.2031-4).

2. On April 27, 1989, petitioner filed suit in district court seeking a refund of tax, plus interest. Both parties moved for summary judgment. The district court granted petitioner's motion, holding that there was no certain knowledge at the moment of Mrs. Carter's death whether Mr. Carter had survived, or how long he might survive, and that resort to the actuarial tables was therefore required for valuation purposes (Pet. App. 19-20).

3. The court of appeals reversed (Pet. App. 12). The court concluded that the actuarial tables in the estate tax regulations were only one of many "recognized valuation principles" contemplated by the Treasury Regulations as a means for valuing a life interest. Noting that "certainty" in the knowledge of facts pertaining to the value of property is also a "recognized valuation principle," the court held that use of actuarial tables was not proper in the circumstances of this case. There was adequate knowledge of the facts at the time the usufruct was created, by the simultaneous deaths of the Carters, to determine that the life estate had no value (Pet. App. 11-12).

ARGUMENT

The court of appeals correctly held that the circumstances of this case warranted valuation of decedent's life estate on the basis of the known fact of his simultaneous death with

his wife, rather than on the basis of the demonstrably inapplicable life-expectancy assumptions in the actuarial tables in the Treasury Regulations. The decision is consistent with *Ithaca Trust Co.* v. *United States*, 279 U.S. 151 (1929), and *United States* v. *Provident Trust Co.*, 291 U.S. 272 (1934), and does not conflict with the decision of any other circuit. Further review is therefore not warranted.

1. Section 2013 of the Internal Revenue Code authorizes a credit against estate tax with respect to property in a decedent's estate that has already been taxed in the estate of another within ten years prior to, or two years after, the decedent's death. The amount of the credit is based upon the ratio of the value of the transferred property to the value of the transferor's entire estate. 26 U.S.C. 2013(b). Regulations issued under this statute provide that, when the transferred property is a life estate, remainder, or other limited interest, the value of the transferred property is to be determined "as of the date of the transferor's death on the basis of recognized valuation principles (see especially §§ 20.2031-7 and 20.2031-10)." 26 C.F.R. 20.2013-4(a). The regulations that are cross-referenced in Section 20.2013-4 are actuarial tables that compute the value of various limited interests in property based upon the age of the transferee.

The guiding principle in valuing property for estate tax purposes is the fair market value of the property. 26 C.F.R. 20.2031-1(b). There are certain property interests for which such valuation is difficult, however, and for those situations the Internal Revenue Service has published actuarial computations that may be used in conjunction with traditional valuation methods. But the actuarial calculations are not a required or appropriate methodology in every case. As the court of appeals observed in *Estate of Lion* v. *Commissioner*, 438 F.2d 56, 60 (4th Cir.), cert. denied, 404 U.S.

870 (1971), a case that involved precisely the same issue presented in this case:

> While the regulations indicate that *ordinarily* the value of a life estate is to be determined by the use of actuarial tables, the use of tables is subject to the underlying premise that what is sought to be achieved is value "as of the date of the transferor's death on the basis of recognized valuation principles."

In the present case, it was known at the time the transfer was effected (by the death of Mrs. Carter) that the property to be valued was a life estate that had no meaningful duration. The court of appeals correctly concluded that, under "recognized valuation principles," that known fact made the value of the life estate zero (Pet. App. 10-11). See *Estate of Lion* v. *Commissioner*, 438 F.2d at 60-62 ("the only reasonable conclusion is that [the] * * * life estate was valueless at the instant of its creation and destruction").[1]

2. Petitioner contends (Pet. 7-13) that the court of appeals erred in allowing the knowledge of facts that existed at the time of the transfer to override the actuarial tables for valuation purposes. Petitioner submits that the court of appeals strayed from this Court's decision in *Ithaca Trust Co.* v. *United States*, where the Court, called upon to determine the value of a trust's charitable remainder when the

---

[1] The purpose of the Section 2013 credit is to alleviate the problem of double taxation on the same property in two estates. A life estate qualifies for the credit, even though it will not be taxed in the transferee's estate, on the apparent rationale that "the terminable interest may produce income that might be taxable in the life tenant's estate," or that "income derived from the life estate might enable the decedent to conserve other assets which would then be subject to estate tax." *Holbrook* v. *United States*, 575 F.2d 1288, 1290 (9th Cir. 1978). Neither of these rationales for the credit serve a purpose in a situation where, as here, the "enjoyment" of the life estate is only momentary, at best.

life tenant died six months after the trust was established, held that the charitable remainder was to be valued according to actuarial principles. 279 U.S. at 155. The Court concluded in *Ithaca Trust* that the value of the life estate was to be determined "as of the date of the testator's death." *Ibid.* Because it was "uncertain" on the date of the testator's death when the life estate would end, the Court held that actuarial tables should be used for valuation purposes in that case. *Ibid.*

There was, however, no similar uncertainty on the date of the testator's death in the present case because it was known *at that time* that Mr. Carter either was already dead or would die in a matter of moments. Indeed, it was the very certainty that their deaths had been simultaneous that caused the life estate to vest in Mr. Carter under state law (as the younger of the two decedents). Because their deaths were simultaneous, the value of Mr. Carter's life estate at the time of the death of his wife was zero. See *Estate of Lion* v. *Commissioner*, 438 F.2d at 62. As the court below properly concluded (Pet. App. 10):

> This case is unlike *Ithaca Trust*. * * * At the moment of Mrs. Carter's death, Mr. Carter's death was not an 'uncertain probability,' as was the death in *Ithaca Trust*, where the life tenant died six months after the transfer.

This Court has specifically recognized that actuarial tables need not be blindly followed when facts known at the time of the transfer point to a different result. In *United States* v. *Provident Trust Co.*, 291 U.S. 272 (1934), the testator's daughter held a life estate with a remainder to her lawful issue, with a gift to charities upon the failure of issue. At the time of the testator's death, it was known that the daughter was physically incapable of bearing children. Although there is a legal presumption that a woman is capable of bearing children throughout her life, the Court

held that valuation is a practical problem (*id.* at 286)

> to be determined by ascertaining in terms of money what the property constituting that interest would bring in the market, subject to such uncertainty as ordinarily attaches to such an inquiry. See *Ithaca Trust Co.* v. *United States, supra.* Thus stated, the birth of a child to the daughter of the deceased was so plainly impossible that, as a practical matter, the hazard disappears from the problem.

The Court therefore held in *Providence Trust* that, when the value of an interest in property may be determined at the time it was created by reference to known facts, resort to an artificial methodology such as the presumption of fertility is not appropriate. See *ibid.* The Service's rulings have been consistent with that conclusion. See Rev. Rul. 80-80, 1980-1 Cum. Bull. 194 (permitting departure from actuarial tables for valuation of life interest where the individual involved "is known to have been afflicted, at the time of the transfer, with an incurable physical condition that is in such an advanced stage that death is clearly imminent").

When it is known at the time of the transferor's death that the life estate of the deemed surviving spouse has no meaningful duration, and when it is only because of the operation of a legal presumption that one spouse is deemed to have survived and inherited the other's estate, it is proper to consider the actual facts rather than to rely on the evidently inapposite assumptions of the actuarial tables.[2] As

---

[2] Petitioner errs in contending (Pet. 10-11) that *Estate of Wein* v. *Commissioner*, 441 F.2d 32 (5th Cir. 1971), conflicts with the decision below. *Wein* involved the estate tax owed on the cash value of life insurance policies that spouses had taken out on each other's life, in the situation where they died simultaneously in an accident. As the court of appeals noted in this case (Pet. App. 4), "entirely different valua-

the Tax Court recently concluded (by a 15-1 margin) in its reviewed decision in *Estate of Marks* v. *Commissioner*, 94 T.C. 720, 729 (1990):

> [I]t is improper to ignore reality by placing (for tax purposes) a mythical value on the deemed surviving spouse's usufructuary interest. The deemed surviving spouse's enjoyment of the usufruct is too ephemeral to be accorded value—the usufruct terminated immediately upon its creation.

3. Petitioner argues (Pet. 15) that a comprehensive reading of the relevant regulations requires the conclusion that if a property interest is amenable to valuation by actuarial methods, then such methods *must* be used *even* if the true facts known at the time of decedent's death clearly reflect that the actuarial assumptions are inapplicable. The regulations, however, create no such illogical straight jacket. Instead, Section 20.2013-4 of the regulations requires quite directly that a limited interest in property be valued on the basis of "recognized valuation principles." It is true that this regulation suggests that the actuarial tables found in Sections 20.2031-7 and 20.2031-10 of the Treasury Regulations may be referred to for such valuation purposes. As the court of appeals properly concluded, however, the reference to the actuarial tables in Section 20.2013-4 does not mandate "using the actuarial tables in every case" (Pet. App. 7).

---

tion regulations" apply in the case of life insurance policies. See *Estate of Lion* v. *Commissioner*, 438 F.2d at 61-62. Moreover, the Fifth Circuit held one month after its decision in *Wien* that, "where there is sufficient evidence regarding the actual life expectancy of a life tenant, the presumptive correctness of the Treasury [actuarial] tables will be overcome." *Miami Beach First National Bank* v. *United States*, 443 F.2d 116, 119 (1971).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

KENNETH W. STARR
Solicitor General
SHIRLEY D. PETERSON
Assistant Attorney General
GILBERT S. ROTHENBERG
TERESA T. MILTON
Attorneys

JULY 1991

APPENDIX

1. *Statute*:

26 U.S.C. 2013. Credit for tax on prior transfers

(a) General rule.—The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property . . . to the decedent by or from a person (herein designated as "transferor") who died within 10 years before, or within 2 years after, the decedent's death . . .

* * * * *

(d) Valuation of property transferred.—The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor . . .

* * * * *

(e) Property defined.—For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 2041).

* * * * *

2. *Regulations*:

a. 26 C.F.R. 20.2013-4. Valuation of property transferred

(a) For purposes of section 2013 and §§ 20.2013-1 to 20.2013-6, the value of the property transferred to the decedent is the value at which the property was included in the transferor's gross estate for the purpose of the Federal estate tax (see sections 2031, 2032, 2103, and 2107, and the regulations thereunder) reduced as indicated in paragraph (b) of this section. If the decedent

received a life estate or remainder or other limited interest in property included in the transferor's gross estate, the value of the interest is determined as of the date of the transferor's death on the basis of recognized valuation principles (see especially §§ 20.2031-7 and 20.2031-10).

* * * * *

b. 26 C.F.R. 20.2031-1. Definition of gross estate, valuation of property

(b) Valuation of property in general. The value of every item of property includible in a decedent's gross estate under sections 2031 through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section.

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

c. 26 C.F.R. 20.2031-7. Valuation of annuities, life estates, terms for years, remainders, and reversions for estates of decedents dying after November 30, 1983.

(a) In general. (1) Except as otherwise provided in this paragraph (a)(1), for estates of decedents dying after November 30, 1983, the fair market value of annuities, life estates, terms for years, remainders, and reversions is their present value determined under this section * * *

(2) The present value of an annuity, life estate, remainder, or reversion determined under this section which is dependent on the continuation or termination of the life of one person is computed by the use of Table A in paragraph (f) of this section * * *

* * * * *

(c) Life estates and terms for years. If the interest to be valued is the right of a person for his or her life, or for the life of another person, to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property multiplied by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the measuring life * * *

* * * * *

d. 26 C.F.R. 20.2031-9. Valuation of other property

The valuation of any property not specifically described in §§ 20.2031-2 to 20.2031-8 is made in accordance with the general principles set forth in § 20.2031-1. For example, a future interest in property not subject to valuation in accordance with the actuarial principles set forth in § 20.2031-7 is to be valued in accordance with the general principles set forth in § 20.2031-1.

* * * * *

☆ U.S. GOVERNMENT PRINTING OFFICE: 1991—282-061/20629